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PREPARED STATEMENT OF PATRICE L. SIMMS, SENIOR PROJECT ATTORNEY,  
NATURAL RESOURCES DEFENSE COUNCIL

Mr. Chairman, and Honorable Members of the Committee, thank you for this opportunity to speak with you today about H.R. 2567, the Antifreeze Bittering Act of 2005.

Allow me to start by saying that NRDC is a staunch supporter of strong laws that protect the health and wellbeing of people and animals. At its core, the intent of this bill is certainly positive – to protect the health and wellbeing of children, household pets, and wildlife that may be exposed to ethylene glycol (the highly toxic chemical commonly used as automobile antifreeze). We also commend organizations like the Doris Day Animal League for pursuing this worthy cause, and the sponsors and supporters of this bill for making this important issue a priority.

Unfortunately, NRDC must oppose this bill as it is currently written. As a general matter, we do not oppose, and in some cases have specifically recognized the value of bitterants as one means of reducing the number and severity of exposures to toxic chemicals. However, the inclusion of a sweeping liability waiver in H.R. 2567, that would give antifreeze manufacturers, processors, distributors, recyclers and retailers, a get-out-of-jail-free card with respect to any harm that a bittering agent might cause in the future, is simply unpalatable. This “free pass” would apply not only in instances where the bittering agent causes damage to motor vehicle equipment, but also where it directly harms people (by causing sickness or death) or where it causes environmental damage (including impairment of natural resources). Significantly, the waiver also includes no exceptions for harm that results from gross negligence or willful misconduct.

Additionally, the bill includes a provision that preempts States from regulating, in any way and for any reason, antifreeze bitterants (except to the extent that the State regulations are identical to the provisions of H.R. 2567). Preempting State authority to adopt stricter rules than those required at the federal level is rarely a good policy, and in this case it is both unnecessary and unwise.

While we support the regulatory objective of making antifreeze a safer product, including, as one option, a bittering agent requirement in order to reduce the chances of poisoning children, pets, and wildlife, we do not understand why this bill mandates the use of a specific bitterant and then provides a liability waiver. We would urge that the legislation simply require the use of an effective bitterant that will prevent children and pets from consuming this



otherwise sweet-tasting toxic product, and allow the industry to determine what bitterant might be most safe and effective. In our view, it is inappropriate to assign the risks that denotonium benzoate (DB) or another bitterant may pose to the public and the environment, rather than to the industry that reaps the economic benefit from sale of a toxic product that requires a bitterant to be safe.

The mandate to use DB exclusively appears to serve no purpose other than to create a justification for also including a liability waiver – a waiver that takes important protections away from the American people. In fact, allowing flexibility in the use of bitterants would make it easier for industry to respond to any problems that might arise with a particular chemical, or to shift to a more effective, more readily available, safer, less expensive, or otherwise more appropriate chemical if one were to emerge.

There is nothing inappropriate about requiring that the antifreeze industry to make a product that is as safe as it can be – by appropriately addressing the attractiveness and availability of its product to children and animals (including, e.g., taste, color and safety packaging) and by taking responsibility for the toxicity and adverse health and environmental impacts of all the product's ingredients (including impacts resulting from the use of bitterants).

The bill's preemption of State authority to regulate antifreeze bitterants is also troubling. NRDC has a long history of opposing attempts to preempt more stringent State law. In general, in our view, it makes little sense to limit the tools available to States in their front line battles to protect their citizens and respond to public health or environmental hazards. Precluding States from adopting laws more stringent than, or in addition to, federal law prevents advances in public health and environmental protection and leaves people more vulnerable.

While we recognize the importance of the issue that the bill sponsors are attempting to address, and we hope that Congress is able to pass a strong bill that makes antifreeze a safer product, for the reasons I have outlined here, NRDC cannot support H.R. 2567.

Once again, thank you for giving me the opportunity to address this committee today and explain to you NRDC's position on this bill.